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U.S. SMALL BUSINESS ADMINISTRATION  
WASHINGTON, D.C. 20416

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JUL 28 1994

Honorable Reed Hundt  
Chairman  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Dear Chairman Hundt:

On June 29, 1994, the Small Cable Business Association filed a petition for stay of rate regulations that took effect on July 15, 1994. A copy of that petition was sent to the Office of Advocacy at the United States Small Business Administration. The Office of Advocacy has reviewed that petition and shares the concerns of the SCBA about the effect of the regulation on some small businesses. The Office of Advocacy believes that the issues raised by the petitioner requires a reexamination of the size standard for small cable operators based on a complete record that is being developed in ongoing proceedings before the Commission. In the interim, a procedure must be developed to permit low-cost expedited rate relief for small cable operators. Such rate relief should include staying the rate reductions mandated by the regulations or, in dire cases, authorizing the small cable operator to raise rates. If the Commission is unable to quickly establish such a procedure, the Commission should then consider staying rate regulations for small cable operators with gross revenue of less than \$11 million (the Small Business Administration standard for a small cable operator).

As you know, the Commission has established definitions of a small cable operator and small multiple system operator in the second reconsideration report and order in MM Docket No. 92-266. Cable operators meeting those characteristics can elect certain types of transitional relief until the Commission completes a more comprehensive cost survey as part of its ongoing development of cost-of-service rules in MM Docket No. 93-215. The size categories adopted by the Commission -- 15,000 subscribers for a small cable operator and 250,000 subscribers (meeting other characteristics as well) for a small multiple system operator -- is different from the definition of a small cable business adopted by the Small Business Administration in 13 C.F.R. § 121.601.<sup>1</sup> The Commission admits that the 15,000 subscriber

<sup>1</sup> Prior to the adoption of a final rule on April 7, 1994, the definition of small cable business was one with \$7.5 million in gross revenue per year. That standard was raised to \$11 million. 59 Fed. Reg. 16,513.

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standard is the equivalent of gross revenue of \$3.5 to \$4.0 million. MM Docket No. 92-266, Second Order on Reconsideration at ¶ 120.

The Office of Advocacy calls on the Commission to follow the steps outlined in § 3 of the Small Business Act in its ongoing cost study of small systems and not limit the examination of costs to those entities subject to transitional relief. The Office of Advocacy further recommends that the Commission reissue part of further notice of proposed rulemaking for comments on the appropriate definition of a small cable operator and small multiple system operator.<sup>2</sup> Finally, the Office of Advocacy strongly urges the FCC to explore a full range of burden-reducing regulatory options in its ongoing rulemaking in MM Docket No. 93-215.

The Office of Advocacy believes that the burdens imposed on small operators can be partially alleviated without undermining the Commission's rate regulatory regime. The FCC should develop an expedited rate relief proceeding for small operators -- those with revenue of less than \$11 million.<sup>3</sup> The rate relief would either be an exclusion from the current rate reductions or allowing the operator to increase rates if needed to stave off loan defaults or bankruptcy. All a small operator would have to do to obtain this relief is submit certified financials, tax returns, and predicted cashflow to demonstrate that regulated revenue does not cover the costs associated with operations.<sup>4</sup> The Office of Advocacy believes that this process adequately balances the needs of small operators in financial distress with the Commission's need to maintain the integrity of its rate regulatory regime.

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<sup>2</sup> Throughout the further notice of proposed rulemaking in MM Docket 93-215, the Commission requests comments on whether certain regulatory measures only should apply to small operators. The implication of that limitation is that the Commission's determination of a small cable operator in the report and order on the second reconsideration in MM Docket 92-266 is correct. The Office of Advocacy strongly disputes that implication and reissuance of the notice of proposed rulemaking in MM Docket 93-215 will alleviate those implications.

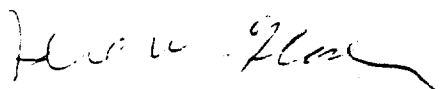
<sup>3</sup> By applying the Small Business Administration's attribution rules, the Commission would prevent subsidiaries of large multiple system operators from taking advantage of the expedited relief process.

<sup>4</sup> Since this data is already available to the small cable operator, the cable operator's cost would be relatively modest. This contrasts with the current and costly requirements to obtain relief under the FCC's current rules.

If the Commission is unable to craft some form of expedited relief, then the rate regulations may force cable operators out of business. Providing assistance at the time of bankruptcy or other type of loan foreclosure is too little assistance too late. Without some form of expedited regulatory relief on a case-by-case basis for small cable operators, then the Office of Advocacy would have no choice but to support the petition for stay filed at the Commission. Due to the burdens that the regulations impose on small cable operators, the Office of Advocacy is considering the filing of an amicus brief in support of SCBA's intervention in the D. C. Circuit.

The Office of Advocacy appreciates the Commission's efforts to maintain a dialogue with the Small Business Administration on these important telecommunication issues. The Office of Advocacy stands ready to assist the FCC staff in the ongoing cost studies and development of an appropriate definition of a small cable operator. The Office of Advocacy looks forward to working with the Commission to ensure that the rate regulation protects consumers without forcing small operators out of business.

Sincerely,



Jere W. Glover  
Chief Counsel for Advocacy

cc: Honorable Andrew Barrett, Commissioner  
Honorable Rachelle Chong, Commissioner  
Honorable Susan Ness, Commissioner  
Honorable James Quello, Commissioner  
William Kennard, General Counsel